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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 616

DUNCAN MILLER,

Petitioner,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit affirming two judgments of the District Court.

Opinions Below

The opinion of the Court of Appeals has not yet been reported and is set forth in the Appendix at pp. 18-19. The District Court filed no opinion. Its judgments are set forth at pp. 21-22 of the Appendix.

Jurisdiction

The judgment of the Court of Appeals was entered July 26, 1962. A Petition for Rehearing was filed August 10, 1962, and said petition was denied September 17, 1962.

Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented

The Court of Appeals found that, as a result of the regulations in effect and the practice of the several lessees whose leases were challenged, other potential applicants were effectively prevented from receiving notice that the leases were open to public offering. The Court, however, in spite of this finding, held that the Secretary of the Interior and these lessees fully complied with the letter of the regulations and the statute and that the leases were issued to qualified persons. The questions presented are:

1. Whether the Court of Appeals applied the proper standards of statutory construction and properly construed the term "qualified to hold a lease" [30 U.S.C. 226] when it addressed itself solely to the letter of the statute and did not interpret such term in the light of other provisions of the statute and its purpose.

2. Whether the Court of Appeals properly departed from its previous position set forth in *McKay* v. *Wahlenmaier*, 96 U.S. App. D.C. 313, 226 F. 2d 35 (1955) that the Secretary of the Interior has a right to cancel a lease improvidently issued to a disqualified applicant to the prejudice of the rights of others, whether or not there is involved a violation of some provision of the statute or regulation, when the Court concluded it was bound to uphold the Secretary of the Interior since it found that the letter of the regulations and statute had been complied with, even though the Court also found that the practice of the lessees had prejudiced the rights of other applicants.

3. Whether the Court of Appeals could uphold the grant of leases issued as a result of a practice that denied other potential applicants notice that would

have permitted them the opportunity to apply for such leases.

Statutes and Regulations Involved

Section 17 of the Mineral Leasing Act of 1920, 41 Stat. 437, 443, as amended by the Acts of August 8, 1946, 60 Stat. 950, 951 and July 29, 1954, 68 Stat. 583, 584, 30 U.S.C. sec. 226, read in part at the time petitioner made his lease offer as follows:

> "All lands subject to disposition under this Act which are known or believed to contain oil or gas deposits may be leased by the Secretary of the Interior. * * * When the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding. * * * Leases issued under this section shall be for a primary term of five years and shall continue so long thereafter as oil or gas is produced in paying quantities.
>
> . . . . . .
>
> "Upon the expiration of the initial five-year term of any noncompetitive lease maintained in accordance with applicable statutory requirements and regulations, the record titleholder thereof shall be entitled to a single extension of the lease, unless then otherwise provided by law, for such lands covered by it as are not on the expiration date of the lease withdrawn from leasing under this section. * * * A noncompetitive lease, as to lands not within the known geologic structure of a producing oil or gas field, shall be extended for a period of five years and so long thereafter as oil or

gas is produced in paying quantities. A noncompetitive lease, as to lands within the known geologic structure of a producing oil or gas field, shall be extended for a period of two years and so long thereafter as oil or gas is produced in paying quantities. * * *"

Section 17 was amended again by the Mineral Leasing Act Revision of 1960, September 2, 1960, 74 Stat. 781, but there was only one substantial change in the provisions pertinent to this case. Noncompetitive leases now simply have a primary term of ten years, and the five-year extension is no longer available. This pertinent change reads, in part, as follows:

"Competitive leases issued under this section shall be for a primary term of five years and noncompetitive leases for a primary term of ten years. Each such lease shall continue so long after its primary term as oil or gas is produced in paying quantities. * * *"

Section 30(b) of the Mineral Leasing Act of 1920, added by the Act of August 8, 1946, 60 Stat. 950, 956, 30 U.S.C. sec. 187b, provides in part:

"Notwithstanding any provision to the contrary in section 30 hereof, a lessee may at any time make and file in the appropriate land office a written relinquishment of all rights under any oil or gas lease issued under the authority of this Act or of any legal subdivision of the area included within any such lease. Such relinquishment shall be effective as of the date of its filing * * *"

Part 192 of Title 43 of the Code of Federal Regulations sets forth the regulations pertaining to oil and gas leases.

43 C.F.R. 192.43 (1954 ed.) at the time of petitioner's lease offers provided:

> "§ 192.43. *Opening of lands to further filings, where a noncompetitive oil and gas lease is canceled or relinquished.* Where a noncompetitive lease is canceled or relinquished and the lands involved are not on the known geologic structure of a producing oil or gas field or are not withdrawn from further leasing, immediately upon the notation of the cancelation or relinquishment on the tract book of the land office or on the tract book of the Bureau of Land Management, if there is no land office for the State, the lands shall be open to further oil and gas lease offers. Offers received in the same mail or over the counter at the same time, will be considered simultaneously filed and priority to the extent of the conflicts between them will be determined by a public drawing in accordance with the procedure prescribed in § 295.8 of this chapter."

It was amended on December 8, 1959, 24 Fed. Reg. 9846, and now reads in pertinent part as follows (see 43 C.F.R. 192.43, 1961 Supp.):

> "(a) Lands in cancelled or relinquished leases or in leases which terminate by operation of law for nonpayment of rental pursuant to 30 U.S.C. sec. 188, which are not withdrawn from leasing nor on a known geological structure of a producing oil and gas field shall be subject to the filing of new lease offers only after notation on the official record of the cancellation, relinquishment, or termination of such lease and only in accordance with the provisions of this section. All lands covered by leases which expire by operation of law at the end of their primary or extended terms shall

likewise be subject to the filing of new lease offers only in accordance with the provisions of this section except that notation of such expiration of the leases need not be made on the official records.

"(b) On the third Monday of each month or the first working day thereafter if the land office is not officially open for business on the third Monday, the authorized officer of the Bureau of Land Management will post on the bulletin board in each land office a list by subdivision, section, township and range if surveyed or officially protracted, or, if unsurveyed, by the metes and bounds description of the lands in leases which expired, were cancelled, relinquished in whole or in part, or terminated and which will become subject to leasing at 10 o'clock a.m. on the fifth working day thereafter together with a notice stating that the lands in such leases are subject to simultaneous filings of lease offers from the time of such posting until 10 o'clock a.m. on the said fifth working day thereafter.

. . . . . .

"(d) If more than one offer to lease all or any part of the acreage covered by an expired, cancelled, relinquished, or terminated lease is filed during the period provided for in paragraph (b) of this section, their priorities will be determined by a public drawing in accordance with § 295.8 of this chapter."

Statement of the Case

Petitioner applied for noncompetitive oil and gas leases in the Public Domain. Each of petitioner's lease offers was rejected on the ground that another applicant had applied for a lease on the land prior to petitioner, and that petitioner was not therefore the first qualified applicant (R. pp. 6, 10, 15).

In each case, the successful applicant who was preferred to petitioner was a person who (a) had previously held a lease on the land applied for, (b) had relinquished the lease, and (c) had then filed a new application for a lease on the same land within minutes after the land office was first open to the public after the relinquishment of the lease (Appendix, p. 19).[1]

The public notice of the lease relinquishments was made by notations on the tract books in the land offices at a time when the tract books were closed to the public, and the lands did not become available for new lease offers until such notations were made (Appendix, p. 19). Thus, when the land offices opened on the morning following the notation of the relinquishment, the relinquishing prior lessees were necessarily the first persons who could apply for a lease.

The Secretary of the Interior upheld the grant of the leases to the relinquishing prior lessees and the denial of such leases to petitioner. The Secretary recognized that there was some merit to petitioner's "judgment on public policy" that this practice would result in "monopolistic control of mineral land" (R. 14). The Secretary concluded, however, that there was nothing in the statute and regulations that disqualifies a relinquishing lessee from leasing the same lands again (R. 15).

petitioner to have been the first qualified applicant. In

Petitioner then brought action in the District Court, asking that the Court set aside the decisions of the Secretary of the Interior, order cancellation of all leases awarded to the relinquishing leassees or agents thereof, and award petitioner such lease in each case that the Court finds

[1] Petitioner's suit in the District Court originally included certain cases in which it was alleged that the successful applicant was the agent or alter ego of the relinquishing lessee, rather than the relinquishing lessee himself. These cases were removed by stipulation from the case (R., pp. 27-28), so that all the cases considered by the Court of Appeals involved relinquishing lessees.

his Complaint, petitioner alleged that the relinquishing lessees or their agents were not "qualified" applicants within the meaning of the Mineral Leasing Act, and that petitioner was denied a fair opportunity to acquire the leases (R. 4, 5). Later, by stipulation of his counsel, petitioner withdrew his claim to certain of the leases and limited his action to those cases where the successful offeror was the relinquishing lessee and there were no simultaneous filings of new offers after the notice of the relinquishment (Paragraph 2 of the Stipulation, R. 26).

Cross-motions for summary judgment were made, and the District Court entered judgment for the Secretary of the Interior (R. 36). An appeal was taken from this judgment (R. 40).

Thereafter, petitioner *pro se* filed a motion, under Rule 60(b), to set aside Paragraph 2 of the Stipulation that had been made by his counsel. The District Court denied this motion (R. 51). A separate appeal was taken from this order (R. 52).

By order of the Court of Appeals, the two appeals were consolidated.

On appeal to the Court of Appeals, petitioner urged that:

> 1. That petitioner was denied an effective opportunity to acquire the leases denied him and that the Secretary's action was improper, arbitrary and capricious.
>
> 2. The applicants who had been granted the leases in preference to petitioner were not "qualified" applicants within the meaning of the Mineral Leasing Act.[2]

---

[2] Petitioner also argued that the District Court improperly denied petitioner's motion, under Rule 60(b), to set aside the Stipulation. Since this issue does not present a substantial federal question, petitioner has not argued the issue in the petition herein. In the event that the petition is granted, petitioner reserves the right to argue this point.

The Court of Appeals affirmed in a decision rendered by only two Judges, one Judge not participating in the decision. In its decision, the Court of Appeals set forth the process by which the relinquishing lessees were able to obtain new leases from the Department of the Interior, and found that "other potential applicants for the leases were thus effectively prevented from receiving notice that the leases were again open to public offering." (Appendix, p. 19.) The Court held, however, that the Secretary of the Interior and the lessees fully complied with the letter of the regulations and the statute and that the leases were issued to qualified persons first making application for them (Appendix, p. 19).

Reasons for Granting the Writ

Congress has established a well-developed structure to provide for the leasing of noncompetitive oil and gas lands in the Public Domain. The fundamental purpose for granting such leases is to promote the discovery and production of oil and gas and, thereby, increase our natural resources and provide revenue to the United States Treasury and the States through royalties. *California Company v. Udall*, 111 U.S. App. D.C. 262, 296 F. 2d 384, 388 (1961). The method by which Congress has sought to give effect to this purpose has been to restrict the period a lessee can hold a lease to a ten-year period with the further right to hold a lease beyond the ten-year period only so long as oil or gas is produced in paying quantities. Section 17 of the Mineral Leasing Act, 30 U.S.C. 226, *supra*, p.

In this case, a number of lessees were able to avoid the requirement that the produce oil or gas in order to hold their leases beyond the ten-year period. They accomplished this by employing the scheme of relinquishing the leases they held on the lands and, then, reapplying for a new lease in the same land.

The Court of Appeals found that the process employed by these lessees effectively prevented other applicants from receiving notice that the lands were again open to public offering (Appendix, p. 19). As a result, these lessees were necessarily the first applicants, and obtained additional ten-year leases on the same land without producing oil or gas, as required by the other provisions of the statute. In this way, these lessees were able to subvert the basic purpose of the Act.

In spite of this, the Court of Appeals held that the lessees were qualified persons and that they and the Secretary fully complied with the *letter* of the regulations and statute (Appendix, p. 19).

The decision of the Court of Appeals thus poses the question whether the Court properly construed the term "qualified to hold a lease under said sections" as used in Section 17 of the Act. More particularly, the question is whether it was sufficient for the Court to address itself merely to the "letter of the statute", or whether the Court had the obligation to construe the term "qualified to hold a lease under said sections" together with the other provisions of the statute, which restrict the time a person can hold a lease absent production of oil or gas, so as to give the most harmonious and comprehensive meaning possible to the statute as a whole and to effectuate the basic purpose of the statute. *Church of Holy Trinity* v. *United States*, 143 U.S. 458 (1891); *United States* v. *American Trucking Associations*, 310 U.S. 534, 543 (1940); *Markham* v. *Cabell*, 326 U.S. 404, 409 (1945); *Clark* v. *Uebersee Finanz-Korp.*, 332 U.S. 480, 488, 489 (1947); *National Labor Relations Board* v. *Lion Oil Co.*, 352 U.S. 282, 288 (1957).

The term "qualified to hold a lease under said sections", is the most important term in the entire fabric of the Mineral Leasing Act, as it concerns the granting of non-

competitive oil and gas leases. The Court below had, for the first time, the opportunity to define this term in light of the basic purpose of the statute. Rather than choose an interpretation that would give effect to the basic purpose of the Act, it chose a literal reading of the Act, which has resulted in the emasculation of the heart of the Act. *Cf.* Markham v. Cabell, *supra*. This decision will, therefore, restrict the Secretary of the Interior, as well as the courts when they are faced, in the future, with other cases involving the meaning of this critical term. More basically, the Court of Appeals has now determined that the Secretary of the Interior should follow the "letter of the statute", rather than the purpose and spirt of the statute. As a result, the mischief of this decision will recur throughout the administration of the Mineral Leasing Act.

II

The ramifications of this decision extend to other fields of administrative law. The concept of qualification as a requirement to receive a license is significantly present in a number of statutes. This, for example, the Natural Gas Act authorizes the issuance of a certificate to engage in the transportation or sale of natural gas to "any qualified applicant". Sec. 7(f), 15 U.S.C. 717f(e) (1958 ed.); the Atomic Energy Act authorizes the issuance of a license for the possession of, to make available for the period of the license, and to distribute special nuclear material to "qualified applicants", Sec. 53(a), 42 U.S.C. 2073(a) (1958 ed.); the Interstate Commerce Act authorizes the issuance of a certificate of the operation of a common-carrier by motor vehicle to "any qualified applicant", Sec. 207(a), 49 U.S.C. 307(a) (1958 ed.), and the issuance of a motor transportation brokerage license to "any qualified applicant", Sec. 211(b), 49 U.S.C. 311(b) (1958 ed.); and the Communications Act authorizes the issuance of a license for a station

operator to such citizens as the Commission "finds qualified", Sec. 303(b), 47 U.S.C. 303(l) (1958 ed.) and also requires an applicant for a station license or modification or renewal thereof to set forth "other qualifications of the applicant to operate the station", Sec. 308(b), 47 U.S.C. 308(b) (1958 ed.).

This case, therefore, presents a vehicle by which this Court may give other administrative agencies guidelines in the interpretation of the recurring significant term "qualified applicant". If it is merely sufficient to look to the letter of the regulations and statutes, as the Court of Appeals has held, then these other agencies will be restricted in the interpretation of their statutes.

III

In *McKay* v. *Wahlenmaier*, 96 U.S. App. D.C. 313, 226 F.2d 35, 42 (1955), the Court of Appeals stated that the Secretary of the Interior ". . . has the right to cancel a lease improvidently issued to a disqualified applicant, *to the prejudice of the rights of others, whether or not there is involved a violation of some provision of the statute or regulation.* This is particularly true where fraud, deception or concealment caused the lease to be issued."[3] (Emphasis supplied.)

The Court of Appeals herein, in its decision, departed from this statement of law. The Court addressed itself solely to the letter of the statute and regulations and, because of its finding of compliance, held itself bound to uphold the Secretary of the Interior.

However, the finding of the Court that the practice of

[3] The Court of Appeals did not directly state that the practice by which the relinquishing lessees obtained the new leases was a fraud, deception or concealment, but did characterize such practice as a vice (Appendix, p. 19). A reading of the facts as found by the Court shows clearly that such practice as resorted to by the relinquishing lessees, if not constituting fraud, certainly constituted deception.

the relinquishing prior lessees effectively prevented other applicants from receiving notice clearly constitutes prejudice to the rights of others. Yet, the Court did not consider whether, as a result of this finding, the leases were improvidently issued to disqualified applicants.

The issue, therefore, whether the Secretary of the Interior should deny a lease to an applicant who has complied with the letter of the statute and regulations, but has obtained such lease to the prejudice of the rights of others, is an issue worthy of consideration by this Court.

IV

It has been well-settled law that an applicant will not be permitted to hold a lease secured as a result of a procedure by which other applicants were denied an equal opportunity to apply for the lease. *Germania Iron Co. v. James*, 89 Fed. 811 (8th Cir., 1898), *app. dismissed* 195 U.S. 638 (1904); *McKay v. Wahlenmaier*, 96 U.S. App. D.C. 313, 326 F.2d 35 (1955); *Barash v. Seaton*, 103 App. D.C. 159, 256 F.2d 714 (1958). *Wright v. Paige*, 110 U.S. App. D.C. 100, 289 F.2d 766 (1961).

This rule is basic to the integrity of the operation of the Mineral Leasing Act, since, if it were not assiduously applied, the disposition of public lands by the Interior Department would "become naught but privileges dependent upon the gracious favor of its officers", *Germania Iron Co. v. James*, *supra*, at page 818, and persons would unfairly obtain leases to public lands by means of devious schemes or subterfuge, *McKay v. Wahlenmaier*, *supra*, 226 F.2d at page 46.

This decision is the first instance in which a court found that certain applicants had employed a practice that denied other potential applicants an effective opportunity to apply for the leases, and yet the Court permitted those who

had obtained leases as a result of this practice to keep such leases, and denied to petitioner the leases that he was deprived of as a result of such practice.

The decision, thus, not only departs from settled law, but also presents a green light to others to devise other ingenious schemes within "the letter of the regulations and statute" to secure an improper advantage in acquiring leases. The Secretary must be required to demand the utmost integrity on the part of those who apply for leases, and this decision does not do so. *Cf., Knight* v. *United Land Association*, 142 U.S. 161, 181 (1891).

Because petitioner was denied an equal opportunity to acquire leases on public lands, he appealed to the Secretary of the Interior and to the courts. This Court has recognized the value of this policing that is done by those who are financially injured and, thus, often the only ones likely to bring to the attention of the agency errors of law. *Cf., Federal Communications* v. *Sanders Bros. Radio Station*, 309 U.S. 470, 477 (1940). The effect of this decision of the Court of Appeals is not only to deny redress to petitioner for an acknowledged wrong done him—*cf., Stark* v. *Wickard*, 321 U.S. 288, 310 (1944); *United States* v. *Skinner & Eddy Corp.*, 28 F.2d 373, 382 (W.D. Wash., 1928)—but also to seriously limit the only real incentive for the policing of the administration of the Mineral Leasing Act that is done by private individuals.

V

This case assumes increased significance, in view of the fact that this Court has now granted certiorari in *Fenelon B. Boesche, Administrator of the Estate of F. W. Boesche, deceased* v. *Stewart L. Udall, Secretary of the Interior*, No. 332, Supreme Court of the United States, October Term 1962. The *Boesche* Case concerns the question of the authority of the Secretary of the Interior to cancel a lease

in an administrative proceeding." In the Memorandum for Respondent, filed in behalf of the Secretary of the Interior in this case, it was pointed out that, on June 30, 1960, 139,000 outstanding leases were supervised by the Department of the Interior and that, for the three year period ending June 30, 1960, there were 1,129 administrative cancellations out of the total of 54,000 leases issued.

If this Court should determine in the *Boesche* Case that the Secretary has the authority to cancel leases, then the equally important question of what criteria the Secretary should use in determining whether to cancel a lease would be of heightened significance. The Secretary has become more greatly aware of the many frauds that have been committed by applicants in improperly obtaining leases, and he has recently sought to cancel numerous leases obtained by fraud. See: *Pan American Petroleum Corp.* v. *Pierson*, 284 F.2d 649 (10th Cir. 1960), *cert. denied*, 366 U.S. 936 (1961). As has been shown, the decision of the Court herein seriously restricts the authority of the Secretary of the Interior to cancel a lease, and thus this case strongly deserves consideration by this Court.

VI

The significance of this case is not diluted by the fact that at a later date, not pertinent to this case, the Secretary amended the regulation that had been in effect when petitioner's leases were denied. It was not the regulation *per se* that petitioner had attacked but, rather, the manner in which the Secretary had applied it. Although the Court found that the new regulations "assure public notice and fuller public participation in the process of reissuing relinquishing leases" (Appendix, p. 19), the legal issues raised by the decision of the Court of Appeals, that have been presented in this petition, still subsist.

The change in regulation does not affect the more signifi-

cant issue whether a relinquishing lessee who applies for a lease on the same land is a qualified applicant. The issue whether the Court applied the proper standards in interpreting the Mineral Leasing Act and, in particular, the term "qualified to hold a lease under said sections" and the effect of the Court's interpretation on other statutes using a similar term is still present. The issue whether the Secretary of the Interior should deny a lease to an applicant who has complied with the statute and regulations but who obtained his lease to the prejudice of the rights of others is still present. The effect of the decision on the raquirement of equal opportunity to the public to apply for a lease, as well as its effect on the integrity of the administration of the Mineral Leasing Act, is still present. Further, as a result of this decision, a legal wrong has been done to petitioner, and the relinquishing prior lessees have been permitted to retain the leases they acquired as a result of the "vice of the old practice".

Moreover, the history of the administration of the Mineral Leasing Act shows that the Secretary has shifted back and forth in his procedure and regulations with regard to relinquished leases. The regulation now in effect is very similar to the regulations that had been in effect during the years 1940 to 1949. Compare 43 C.F.R. 192.43 [1961 Supp.] (present regulation) with 43 C.F.R. 192.14(a) [1940 Supp.] and 43 C.F.R. 192.14(b) [1943 Cum. Supp.] (regulations in effect, from 1940 to 1949). When the Secretary of the Interior adopted the regulation pertinent to petitioner's case in 1949 43 C.F.R. 192.43 [1954 ed.] and employed it during the period 1949 to 1959, he abandoned the public protection of posting and notice that had previously been in the regulations and are now in the present regulation.

By refusing to set aside the leases issued under the regulation that governed petitioner's case, the Court of Appeals

has given judicial sanction to the manner in which the Secretary applied such regulation. The Secretary, therefore, may, under the decision herein, readopt the old regulation and procedure, if he deems it expedient.

A further reason for granting the writ, therefore, is the necessity of determining whether the prior regulation was properly applied.

Conclusion

For the reasons given above, it is urged that a writ of certiorari should be granted.

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NOVEMBER 16, 1962.

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 16373-16374.

DUNCAN MILLER, *Appellant*,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, *Appellee*

Appeals from the United States District Court for the District of Columbia

Decided July 26, 1962

Mr. Chester C. Shore for appellant:

Mr. Hugh Nugent, Attorney, Department of Justice, of the bar of the Supreme Court of Missouri, *pro hac vice*, by special leave of court, with whom *Assistant Attorney General Clark*, *Messrs. Roger P. Marquis* and *Walter H. Williams*, Attorneys, Department of Justice, were on the brief, for appellee. *Mr. S. Ballingsley Hill* and *Robert S. Griswold, Jr.*, Attorneys, Department of Justice, also entered appearances for appellee.

Before WASHINGTON, BASTIAN* and BURGER, *Circuit Judges*.

BURGER, *Circuit Judge*: Summary judgment for the Secretary of the Interior was granted in the District Court in a suit brought by the appellant to cancel certain leases to public lands issued by the Secretary under the Mineral Leasing Act of 1920, 41 Stat. 443, 74 Stat. 781 (1960), 30 U.S.C.A. § 226 (Supp. 1961), and to have new leases for these same lands issued to the appellant.

Appellant himself applied for each of these leases but received none of them, since in each instance it was deter-

* Judge Bastian did not participate in the decision of these cases.

mined that he was not the first qualified person to have entered an application. The applicant to whom the lease was awarded in each instance was the same person who had relinquished the immediately precedent lease before its term had expired. The process by which the relinquishing lessees were able to obtain new leases is here attacked as having denied to other potential applicants a fair opportunity to obtain the benefits of the Mineral Leasing Act.[1]

A careful review of the record makes clear that the Secretary of the Interior and the several lessees whose leases are here challenged fully complied with the letter of these regulations and the statute as they existed at the time, and that the leases were issued to qualified persons first making application for them, consistent with the statutory command.[2] 30 U.S.C. §226 (1958). The judgment and order of the District Court are

Affirmed.

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[1] Under land office regulations in effect during the time of appellant's various applications, when an existing lease was either cancelled or relinquished the land became subject to the filing of new lease offers as soon as the cancellation or relinquishment was noted on the tract book of the United States land office in the particular area. This notation in the tract book always occurred during the hours when the land office was closed to the public, usually between the time the office closed at 3:00 p.m. the day of relinquishment or cancellation and 10:00 a.m. the following morning when the office reopened. Interested parties could not learn of the relinquishment until they had opportunity to examine the tract book. But the relinquishing lessee in each case involved here filed an offer for the relinquished lease within minutes after the land office opened on the morning of or the morning following the tract book notation. Other potential applicants for the leases were thus effectively prevented from receiving notice that the leases were again open to public offering.

The Secretary of the Interior has recognized the vice of the old practice and his regulations have since been amended to assure public notice and fuller public participation in the process of reissuing relinquished leases. 43 C.F.R. 192.43 (Supp. 1961).

[2] The Secretary also urges that the complaint was subject to dismissal because of the absence of the lessees, said to be indispensable parties. We do not reach that question.

Filed July 26, 1962, Joseph W. Stewart, Clerk

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1961

No. 16,373

District Court Civil 346-60

DUNCAN MILLER, *Appellant*,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, *Appellee*

No. 16,374

DUNCAN MILLER, *Appellant*,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, *Appellee*

Appeals from the United States District Court for the District of Columbia.

Before: WASHINGTON, BASTIAN and BURGER, Circuit Judges

JUDGMENT

These cases came to be heard on the record on appeal from the United States District Court for the District of Columbia and were argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this Court that the judgment and order of the District Court appealed from in these cases be, and they are hereby, affirmed.

Per Circuit Judge BURGER.

Dated: July 26, 1962.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 346-60

DUNCAN MILLER, *Plaintiff*,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, *Defendant*

Filed February 23, 1961

JUDGMENT

The Court having determined in its order of February 15, 1961, that there is no genuine issue as to a material fact; and having ordered that the plaintiff's motion for summary judgment be denied and that the defendant's motion for summary judgment be granted,

IT IS ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of the defendant and against the plaintiff and the complaint is dismissed.

Dated this 23rd day of February, 1961.

(signed) LEONARD P. WALSH,
Judge, United States District Court.

Approved as to form:

(signed) MALVERN J. SHEFFIELD, JR.,
Attorney for Plaintiff.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 346-60

DUNCAN MILLER, *Plaintiff*,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, *Defendant*

Filed April 27, 1961

ORDER

This matter comes before the Court on Plaintiff's motion to set aside stipulation. Upon consideration of the motion, and the statement of facts, and the memorandum of points and authorities in support of the motion, together with Defendant's response to Plaintiff's motion, and all papers on file in this action, it is this 27th day of April, 1961,

ORDERED, that the Plaintiff's motion to set aside stipulation is overruled.

(signed) LEONARD P. WALSH,
Judge.

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 616

DUNCAN MILLER, PETITIONER

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE SECRETARY OF THE INTERIOR IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. 18–19) is reported at 307 F. 2d 676. The district court wrote no opinion.

JURISDICTION

The court of appeals entered judgment against petitioner on July 26, 1962, and denied his timely petition for rehearing on September 17, 1962. Petitioner filed his petition for a writ of certiorari on November 26, 1962, invoking the jurisdiction of this Court under 28 U.S.C. 1254(1).

QUESTION PRESENTED

The Mineral Leasing Act provides that the Secretary of the Interior shall award oil and gas leases to

"the person first making application for the lease who is qualified to hold a lease under this Act * * *." In each instance at issue here, petitioner's application followed one by a person who had previously held such a lease for the land and had relinquished it.

The question presented is whether the Secretary properly rejected petitioner's applications on the ground that he was not the first qualified applicant.

STATUTES AND RULES INVOLVED

The pertinent provisions of the Mineral Leasing Act of 1920 and the Regulations Relating to Public Lands of the Department of the Interior are set forth in the Appendix, *infra*, pp. 11–13.

STATEMENT

Petitioner filed several applications for oil and gas leases of public lands pursuant to the Mineral Leasing Act of 1920 (see Appendix A, *infra*, pp. 11–12). In each instance petitioner's application was subsequent to an application filed by a person who had previously held an oil and gas lease to the land but had relinquished it. The Secretary of the Interior rejected each of petitioner's applications on grounds that he was not the first qualified applicant. Petitioner had unsuccessfully appealed these rejections contending that the earlier applicants were not "qualified" applicants for the land covered by the relinquished leases because they were themselves the relinquishing lessees.

The contention calls into question the statutory provisions for the award of oil and gas leases established by the Mineral Leasing Act of 1920 and the public lands regulations issued pursuant thereto.

Section 17 of the Act (App. A., *infra*, p. 31) authorizes the Secretary of the Interior to lease public lands for the drilling of oil or gas to "the person first making application * * * who is qualified to hold a lease under this Act * * * ." Section 1 of the Act (App. A, *infra*, p. 17) specifies that leases may be granted to citizens, associations of citizens, corporations organized in the United States or municipalities. The leases run for a stated term of years but will be continued beyond that term so long as oil or gas is produced in paying quantities (Pet. 4).

Under Section 30(b) of the Act (App. A, *infra*, p. 12) the holder of an oil or gas lease may relinquish his rights under the lease at any time. Thereupon the land included in the lease becomes subject to the filing of new lease applications. 43 C.F.R. 192.43 (App. A, *infra*, p. 12). Under the regulations in effect when petitioner's applications were filed (since changed by amendment in December 1959 (see, *infra*, pp. 6–7)), new lease offers could be made "immediately upon the notation of the cancellation or relinquishment on the tract book of the land office * * *." 43 C.F.R. 192.43 (1954 ed.) (App. A, *infra*, p. 12). Customarily, these notations were made during the hours before 10:00 a.m. or after 3:00 p.m. when the land offices are closed to the public. Members of the general public could learn of the availability of relinquished land for new lease offers when the land office first opened following notation on the tract book of the relinquishment of a former lease. Relinquishing lessees frequently applied for new leases on the same land to try to extend the length

of time the land would remain under their control, or to take advantage of low rental rates in the early years of a lease. Prior to 1960, the second and third years were rent-free. When notation on the tract book was made on the day of the relinquishment, as here, then the notation was likely to be the first actual notice to persons other than the relinquishing lessee that there had been a relinquishment, as well as being formal notice of the land's renewed availability for lease.[1]

Petitioner filed a number of offers under the pre-December 1959 regulation to lease lands on which leases had been relinquished, but the land office managers rejected each of these offers because of the existence of prior applications by the relinquishing lessees. In appealing these rejections, petitioner has argued that the prior lessee's knowledge that he had relinquished his lease gave him an unfair advantage over members of the general public in that he alone knew that his relinquishment was going to be noted on the tract book and that the land would become available for lease.

Both the Director of the Bureau of Land Management and the Secretary of the Interior affirmed the rejection of petitioner's offers, relying on an earlier

[1] More frequently, the notation on the tract book would not be made until a few days after the relinquishment was filed with the land office. In such cases, persons other than the relinquishing lessee could obtain actual notice of the relinquishment and coming availability of the land from the public serial register in the land office on which relinquishments are recorded.

decision (A-27620, July 28, 1960) [2] in which the Secretary had considered and rejected petitioner's contentions. In that decision, after examining the qualifications for an applicant set out in Section 1 of the Mineral Leasing Act (App. A, *infra*, p. 11), and in his own regulations, 43 C.F.R. 191.3 (App. A, *infra*, p. 12), the Secretary held that there was nothing in either of them disqualifying a relinquishing lessee from applying for a new lease, and that applicants are entitled to rely on the statute and regulations as they stand at the time of application. He concluded (App. B, *infra*, p. 18):

> Elementary considerations of proper administrative procedure require that prospective lease applicants shall be entitled to rely upon the language of the statute and the regulations as they are written, without the necessity for speculation on the possibility that an administrative officer may decide, in the processing of a particular offer, that more stringent qualifications than those presently in existence should be imposed. If the appellant is correct in his conclusion that a relinquishing lessee ought not be eligible for a new lease in circumstances which forbid an extension of his old lease, it is reasonable to suppose that the need for such rule will become apparent to those who administer the law or to those who seek to benefit by its provisions and appropriate

[2] This decision, which was attached to the complaint in the present case, is printed as Appendix B, *infra*, pp. 14–18. Petitioner has appealed precisely this same point to the Secretary more than 20 times. The Secretary has rejected each of these on the basis of that first decision.

> action will be taken to adopt such rule, either by amendment of the statute or amendment of the regulations. But, until such action is taken so that all may be informed of such rule, it is necessary to recognize that there is nothing which forbids the award which was made in this case. * * *

Petitioner then brought the present action, asking the district court to set aside the Secretary's decisions, order cancellation of all leases awarded to relinquishing lessees, and order that he be awarded leases wherever the court should find him to be the first qualified applicant. The district court granted summary judgment for the Secretary (Pet. App. 21) and the court of appeals affirmed (Pet. App. 18–19).

ARGUMENT

The issue presented by the petition is of no general importance since an amendment to the public lands regulations adopted in 1959 meets petitioner's objections to the administrative procedures. There is no conflict of decisions and no cause for further review.

1. Essentially, petitioner's complaint is that the long established system by which the priority of applications for mineral leases has been determined—known as "the tract book rule"—operated unfairly where the Department of the Interior made lands covered by relinquished leases available for leasing. He contends that notation of a relinquishment on the tract book did not give the general public sufficient notice to compete with the relinquishing lessees. On December 8, 1959, the Secretary amended the regulations to require that notices of relinquishments

and other terminations be posted in the land office on the third Monday of each month, that these notices state that the lands involved are "subject to simultaneous filings of lease offers" until the fifth working day thereafter, and that priorities among simultaneous offers be determined by public drawing. 24 Fed. Reg. 9846, 43 C.F.R. 192.43 (1962 Supp.) (App. A, *infra*, p. 13). This change of the regulations to insure all persons at least four days notice deprived this case of prospective effect and any general importance.[3]

2. In any event, there is no merit to petitioner's contentions.

a. Petitioner argues that the relinquishing lessees are not "qualified" to apply for oil and gas leases. However, he does not once refer to the provisions of the Mineral Leasing Act and the public lands regulations which state who is qualified to hold such leases without making the exception which petitioner would have the courts read into them. Section 1 of the Mineral Leasing Act (App. A, *infra*, p. 11) and the regulation implementing it, 43 C.F.R. 191.3 (1954 ed.) (App. A, *infra*, p. 12), both enumerate the classes of applicants eligible for such leases—citizens of the United States, associations of such citizens, corporations organized in the United States and municipalities. They make no exception for relinquishing lessees and there is no prohibition to be found elsewhere

[3] It should be noted that the revised regulation is being challenged in *Thor-Westcliffe Development, Inc.* v. *Udall* (C.A. D.C., No. 17101), argued December 10, 1962, on the ground that the four-day period for simultaneous applications violates the direction of Section 17 of the Act that leases be awarded to the person "first making application."

against the award of leases to relinquishing lessees. Nor is there any provision in the statute which could reasonably be read as compelling the Secretary to exclude a relinquishing lessee from among the classes of persons who are eligible to file for relinquished land. Under the circumstances, the courts below properly held that the Secretary was acting within his discretion in refusing to read into the Act an exception for relinquishing lessees which would render persons made eligible by the terms of the Act ineligible and result in an award to applicants whose offers were not first in time.

b. The tract book rule to which petitioner would make exception has long been accepted as one giving "equal opportunities to all applicants." *Germania Iron Co.* v. *James,* 89 F. 811, 815 (C.A. 8), appeal dismissed, 195 U.S. 638. For over 70 years, notation on the tract book (the basic local public lands document) has been deemed a fair way to notify the public at large that land is available and to minimize the advantage of those with special information. The fact that petitioner believes that the rule should be modified when applied to the relinquishment situation does not override the Secretary's judgment in the past that a specific exception was not warranted. The long period of time during which the Secretary has applied the general practice of notation in the tract book to the relinquishment situation, and petitioner's failure to point to a single case wherein this issue has been raised, let alone to a decision in conflict with those of the courts below, strongly indicate that the system not only complies with the statute but has not been deemed

to have operated unfairly.[4] Petitioner asks retroactive application of his version of what the rule should have been to the detriment of those who complied with the rule as it stood. Such a retroactive substitution of a different regulation as sought by petitioner would be an unwarranted penalty against those who followed the existing rules. To the extent that the rule, although authorized by statute, has presented practical administrative problems, they are properly the responsibility of the Secretary and he has acted to resolve them by amendment of the regulations.[5]

3. Should the petition be granted, the Secretary of the Interior reserves the right to make the additional argument, urged but not ruled upon below, that dismissal of petitioner's suit was proper because of the absence of the lessees, who are indispensable parties.

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[4] A stipulation in the record before the courts below (Jt. App. 29–32) shows that, of the 29 applications on which petitioner originally filed suit, only five were filed within 15 days of the date of notation on the tract book and in three of those five instances the successful applicant was not the relinquishing lessee. In the other 24 instances, petitioner's delay ranged from 19 days to 14 months. Thus, petitioner's charge of unfairness is not proven by the facts of his case. Indeed, it would be difficult to imagine a system which would protect an applicant so consistently late.

[5] Neither the facts nor the issues in *Boesche* v. *Udall*, 303 F. 2d 204 (C.A. D.C.), certiorari granted, November 5, 1962, No. 332, this Term, or *McKay* v. *Wahlenmaier*, 226 F. 2d 35 (C.A. D.C.), on which petitioner relies (Pet. 12–15), are similar to those presented here. Accordingly, neither case affords a basis for this Court to review the decisions below.

There is no basis for petitioner's contention (Pet. 15) that the decision of the court of appeals herein "seriously restricts the authority of the Secretary of the Interior to cancel a lease * * *."

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

ARCHIBALD COX
Solicitor General.
S. BILLINGSLEY HILL,
HUGH NUGENT,
Attorneys.

JANUARY 1963

APPENDIX A

Section 1 of the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. 181, *et seq.*, provides in pertinent part as follows:

> That deposits of * * * oil * * * or gas, and lands containing such deposits owned by the United States [with certain exceptions] shall be subject to disposition in the form and manner provided by this Act to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, or in the case of coal, oil, oil shale, or gas, to municipalities. Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this Act.

At the times petitioner made his lease offers, Section 17 of the Mineral Leasing Act of 1920, 41 Stat. 437, 443, as amended by the Acts of August 8, 1946, 60 Stat. 950, 951 and July 29, 1954, 68 Stat. 583, 584, 30 U.S.C. 226, read in pertinent part as follows:

> All lands subject to disposition under this Act which are known or believed to contain oil or gas deposits may be leased by the Secretary of the Interior. * * * When the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under this Act

shall be entitled to a lease of such lands without competitive bidding. * * *[1]

Section 30(b) of the Mineral Leasing Act of 1920, added by the Act of August 8, 1946, 60 Stat. 950, 956, 30 U.S.C. 187b, provides in part:

> * * * [A] lessee may at any time make and file in the appropriate land office a written relinquishment of all rights under any oil or gas lease * * *. Such relinquishment shall be effective as of the date of its filing * * *.

Part 191 of Title 43 of the Code of Federal Regulations sets forth the general regulations applicable to mineral permits, leases and licenses. 43 C.F.R. 191.3 (1954 ed.) provides:

> § 191.3 *Who may hold leases and permits.* Mineral prospecting permits and mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens; (c) corporations organized under the laws of the United States or of any State or Territory thereof; or (d) in the case of coal, oil, oil shale, or gas, municipalities. A mineral lease or permit will not be issued to a minor but oil and gas leases may be issued to legal guardians or trustees of minors in their behalf.

Part 192 of Title 43 of the Code of Federal Regulations sets forth the regulations pertaining to oil and gas leases. At the times of petitioner's lease offers, 43 C.F.R. 192.43 (1954 ed.) provided in part:

> § 192.43 *Opening of lands to further filings, where a noncompetitive oil and gas lease is canceled or relinquished.* Where a noncompetitive lease is canceled or relinquished and the lands involved are not on the known geologic structure of a producing oil or gas field or are

[1] Noncompetitive leases were then granted for a primary term of five years. They could be extended for as much as five years in the absence of production.

not withdrawn from further leasing, immediately upon the notation of the cancellation or relinquishment on the tract book of the land office or on the tract book of the Bureau of Land Management, if there is no land office for the State, the lands shall be open to further oil and gas lease offers. * * *

Section 192.43 was amended on December 8, 1959, 24 Fed. Reg. 9846, to provide in pertinent part as follows, 43 C.F.R. 192.43 (1962 Supp.)[2]:

(a) Lands in cancelled or relinquished leases * * * shall be subject to the filing of new lease offers only after notation on the official record of the cancellation, relinquishment, or termination of such lease and only in accordance with the provisions of this section. * * *

(b) On the third Monday of each month * * *, the authorized officer of the Bureau of Land Management will post on the bulletin board in each land office a list * * * of the lands in leases which expired, were cancelled, relinquished in whole or in part, or terminated and which will become subject to leasing at 10 o'clock a.m. on the fifth working day thereafter together with a notice stating that the lands in such leases are subject to simultaneous filings of lease offers from the time of such posting until 10 o'clock a.m. on the said fifth working day thereafter.

* * * * *

(d) If more than one offer to lease all or any part of the acreage covered by an expired, cancelled, relinquished, or terminated lease is filed during the period provided for in paragraph (b) of this section, their priorities will be determined by a public drawing in accordance with § 295.8 of this chapter.

---

[2] 43 C.F.R. 192.43 was also amended on March 24, 1955, 20 Fed. Reg. 1778, and August 29, 1957, 22 Fed. Reg. 6967. Neither of these amendments relate to the issues of this case.

APPENDIX B

UNITED STATES DEPARTMENT OF THE INTERIOR
Office of the Secretary
Washington 25, D.C.

A-27620 July 28, 1960

Duncan Miller

: Sacramento 052316.
: Oil and gas lease offer rejected.
: Affirmed.

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Duncan Miller has appealed to the Secretary of the Interior from a decision of the Acting Director of the Bureau of Land Management, dated November 22, 1957, which affirmed the decision of the manager of the land office at Sacramento, California, dated September 10, 1956, rejecting his noncompetitive oil and gas lease offer, Sacramento 052316, because of a conflict with a prior offer, Sacramento 052120, pursuant to which a lease was issued on that day, effective as of October 1, 1956.

The record in this case discloses that L. N. Hagood had previously held an oil and gas lease on all the lands included in the appellant's offer to lease. On April 17, 1956, Mr. Hagood relinquished his lease and on April 18, 1956, filed an offer for oil and gas lease on the same lands. The appellant filed his offer on May 25, 1956. The status reports on the lands in question include notation that the lands were previously included in an oil and gas lease (Hagood's) which was cancelled on relinquishment on April 17,

1956, at 4:15 P.M., and that an oil and gas lease offer for the land was filed on April 18, 1956. The manager rejected the appellant's offer on September 10, 1956, because of the prior conflicting offer and issued a new lease to Mr. Hagood on that date.

In his appeal to the Director of the Bureau of Land Management, the appellant asserted that Mr. Hagood's relinquishment of his lease was a sham. He alleged that since the lease was in its final extended term, Mr. Hagood utilized the relinquishment to enable him to obtain a new lease and thus acquire a perpetual monopoly. On appeal to the Department, he argues that Mr. Hagood was not qualified because he was attempting to evade the Mineral Leasing Law.

In his answer, Mr. Hagood asserts that he is a native born citizen of the United States and thus fully qualified to acquire and hold an oil and gas lease under the applicable law since there is no public land law, regulation or policy which prohibits a former non-competitive oil and gas lessee from lawfully acquiring a new lease on the same land. He asserts that he might have accomplished the same result by requesting a lease in the name of a dummy or nominee, but that he prefers an open and honest transaction in his own name.

From the record presented, it appears that Mr. Hagood's previous lease was relinquished and the fact of such relinquishment was duly noted on the tract book in the land office so that the land became available for leasing once more, before the Hagood offer, which antedates the appellant's offer, was filed and that the appellant recognizes this state of affairs. The question thus presented by this appeal is simply whether Mr. Hagood was disqualified as an applicant for an oil and gas lease because he held the previous lease on the same land.

Section 1 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., sec. 181), specifies that lands owned by the United States shall be subject to disposition, including leasing, to

> citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, or in the case of coal, oil, oil shale, or gas, to municipalities. * * * Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this Act.

The Department's regulations recognize the entities enumerated in the statute as proper holders of mineral prospecting permits and mineral leases and add:

> * * * A mineral lease or permit will not be issued to a minor but oil and gas leases may be issued to legal guardians or trustees of minors in their behalf. (43 CFR 191.3)

The Mineral Leasing Act also provides that when lands to be leased are not within any known geological structure of a producing oil or gas field, as in this case,

> the person first making application for the lease who is qualified to hold a lease * * * shall be entitled to a lease of such lands without competitive bidding. (Sec. 17; 30 U.S.C., 1952 ed., Supp. V., sec. 226).

In cases of cancellation or relinquishment of a previous lease, the regulations of the Department provided at the time when Mr. Hagood's lease was relinquished.

> Where a noncompetitive lease is cancelled or relinquished and the lands involved are not on the known geologic structure of a producing oil or gas field or are not withdrawn from further leasing, immediately upon the notation of the cancellation or relinquishment on the tract book of the land office * * * the lands shall be open to further oil and gas lease offers. (43 CFR 192.43).

The appellant does not deny that the lands covered by his lease offer were available for leasing following notation of termination of the Hagood lease and questions only the qualification as an officer of the person to whom the lease was awarded because of his earlier lease of the same lands. His objection to the lessee's qualification arises from his fear that if the practice of awarding a new lease to a lessee who relinquishes his existing lease because it is not subject to renewal is recognized, monopolistic control of mineral lands which is at variance with desirable public policy may result. Thus, in essence, the appellant contends that the lessee is unqualified, not because of any expression of public policy contained in the applicable statute or the regulations of the Department, but because he feels that as a matter of desirable public policy the former lessee ought not to be regarded as qualified.

It is possible that there is some merit in the appellant's judgment on desirable public policy. It is a fact, however, that the Congress has not declared that new leases may not be awarded to lessees upon their relinquishment of existing leases for the same lands. Nor has the Secretary of the Interior, in the exercise of the discretion vested in him by the Mineral Leasing Act, determined that leases shall not be awarded to relinquishing lessees. In the absence of such action by the Congress or the Department, there is no basis

for an attempt to read into the existing statute or the regulations a requirement of this nature. Elementary considerations of proper administrative procedure require that prospective lease applicants shall be entitled to rely upon the language of the statute and the regulations as they are written, without the necessity for speculation on the possibility that an administrative officer may decide, in the processing of a particular offer, that more stringent qualifications than those presently in existence should be imposed. If the appellant is correct in his conclusion that a relinquishing lessee ought not be eligible for a new lease in circumstances which forbid an extension of his old lease, it is reasonable to suppose that the need for such rule will become apparent to those who administer the law or to those who seek to benefit by its provisions and appropriate action will be taken to adopt such rule, either by amendment of the statute or amendment of the regulations. But, until such action is taken so that all may be informed of such rule, it is necessary to recognize that there is nothing which forbids the award which was made in this case. See *M. A. Machris, Melvin A. Brown*, 63 I.D. 161 (1956).

Therefore, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 23, Order No. 2509, as revised; 17 F.R. 6794), the decision of the Acting Director of the Bureau of Land Management is affirmed.

(Sgd) EDMUND T. FRITZ,
Acting Solicitor

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 616

DUNCAN MILLER,

Petitioner,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF OF PETITIONER

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF OF PETITIONER

I

Respondent has argued that Section 1 of the Mineral Leasing Act is the only section that relates to and shapes the meaning of "qualified to hold a lease under said sections", as that term is used in Section 17 of the Act. He argues that, since the Act did not specifically exclude relinquishing lessees from applying for new leases on the same land, the Secretary could properly hold that such persons were qualified applicants. Respondent has made this argument with full knowledge that the practice employed by the relinquishing lessees permitted them to hold their leases beyond the ten-year statutory period without

producing oil or gas and, thus, emasculate the basic purpose of the Act.[1]

This narrow interpretation of the statute sharply points up the significance of this case in the interpretation of statutes by administrative agencies. The Supreme Court has laid down the mandate that an administrative agency must interpret one provision of a statute together with other provisions and the purpose of the Act (Petition, p. 10). Petitioner has shown that the provisions in Section 17 relating to the time that a lessee may hold a lease, absent oil or gas production, must necessarily relate to and shape the meaning of "qualified", as used in Section 17. By looking solely to Section 1 and completely blinding himself to the other provisions limiting the time in which a lessee can hold a lease absent production of gas or oil—the heart of the Mineral Leasing Act—the Secretary has also blinded himself to the proper function of statutory interpretation and has made a mockery of the purpose of the Act.

II

Petitioner has not asked that an exception be made to the tract book rule. Rather, petitioner has asked that the tract book rule be applied in a way to assure petitioner and other applicants an equal opportunity to apply for leases. Respondent's claim that the Secretary's practice "has not been deemed to have operated unfairly"[2] is com-

[1] Respondent has admitted that this practice was resorted to in order to extend the time in which the land would remain under their control (Brief of Respondent, pp. 3-4). Respondent has not refuted the showing by Petitioner of the effect of this practice on the basic purpose of the Mineral Leasing Act (Petition, pp. 9-11).

[2] Respondent has sought to buttress this argument by pointing out that twenty-four of petitioner's applications were filed more than nineteen days after the date of notation on the tract book. This, however, is irrelevant, since, under the practice permitted by the Secretary, no matter how diligent petitioner may have been, he could not possibly have applied

pletely unwarranted, since the Court of Appeals found, in its decision, that, as a result of the practice permitted by the Secretary, "other potential applicants for the leases were thus effectively prevented from receiving notice that the leases were again open to public offering".

Respondent has argued that the relinquishing lessees complied with the rule as it stood and that petitioner has sought a retroactive substitution of a different regulation. This argument ignores the fact that the statutes and regulations clearly provided that a lessee could not hold a lease beyond the ten-year period unless he produced oil or gas. That is sufficient notice that they cannot resort to a brazen, devious practice [3] to avoid this requirement, and seek official sanction by a narrow interpretation of the statute and regulations.

Respectfully submitted,

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---

prior to the relinquishing lessees. For petitioner to have been the first applicant under this practice, it would have required clairvoyance, rather than diligence.

Further, it requires time to examine land and to determine whether such land is desirable for leasing. That petitioner was not dilatory is borne out by the fact that the Secretary in his decision, could point only to the relinquishing lessees as persons who had applied prior to petitioner. In each case, petitioner was the next applicant.

[3] Respondent has characterized the practice permitted herein as one that presented "practical administrative problems". The use of such euphemistic language does not negate the fact that such practice not only denied petitioner and other applicants an opportunity to apply for the leases, but also permitted the relinquishing lessees to hold their leases beyond the ten-year period without producing oil or gas. This, therefore, presented more than practical administrative problems but, rather, presented a practice that went to the very basic purpose of the Mineral Leasing Act.

Office Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1962

No. 616

DUNCAN MILLER,

Petitioner,

vs.

STEWART L. UDALL, Secretary of the Interior,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

PETITION FOR REHEARING.

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Question presented: Public domain "controlled by any device," who is "first qualified applicant" under Federal Mineral Leasing Act, Section 15 applying Section 27 1

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IN THE

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Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

PETITION FOR REHEARING.

Petitioner respectfully applies herewith for a rehearing of the order of this Court, dated January 21, 1963, denying the petition for a writ of certiorari to the United States Court of Appeals for the District Court of Columbia Circuit.

As grounds for this request petitioner states as follows:

"Khrushchev" could have asked the respondent (during their recent meeting in Russia) if it were true that by "rigging" or through "rigging" one American citizen could succeed or prevail over another and be considered "qualified" to so prevail under public land laws of the United States. The answer would have to have been an unqualified "yes", as the rulings in this case

now stand. This is the primary importance or necessity of the review of this question. The Court below found:

> "Under land office regulations in effect during the time of appellant's various applications, when an existing lease was either cancelled or relinquished the land became subject to the filing of new lease offers as soon as the cancellation or relinquishment was noted on the tract book of the United States land office in the particular area. This notation in the tract book always occurred during the hours when the land office was closed to the public, usually between the time the office closed at 3:00 p.m. the day of relinquishment or cancellation and 10:00 a.m. the following morning when the office reopened. Interested parties could not learn of the relinquishment until they had opportunity to examine the tract book. But the relinquishing lessee in each case involved here filed an offer for the *relinquished lease within minutes* after the land office opened on the morning of or the morning following the tract book notation. *Other potential applicants* for the leases were thus *effectively prevented from receiving* notice that the leases were again open to public offering.
>
> "The Secretary of the Interior has recognized the *vice of the old practice* . . ." (Emphasis supplied.)

In some instances the filing was at 10:00 a.m., the moment of the opening of the land office the following morning.

The Appeals Court has drawn or projected a negative of a "rigging" but has begged the question of developing any picture.

New antitrust points of law previously not considered are found in the substance of the following:

> "The staff of the FTC conducted its inquiry on the premise that a 'rigged' television quiz show was an unfair or deceptive act or practice in commerce and an unfair method of competition under *section 5 of the Federal Trade Commission Act.*" (Emphasis supplied.) (From Congressional hearings on television. Ref. H. Repts. 1258, 86 Cong., 2nd Sess., p. 27.)

Particularly applicable to this case is the foregoing when one considers Section 27 of the Mineral Leasing Act of 1920 as amended, Title 30, U.S.C. (1958 Ed.) Sec. 184. The concluding part of this Section specifically prohibits monopolization by "device and combination". A good definition of "rigging" can be found in the testimony taken in the Congressional hearings entitled "An Investigation of Television Quiz Shows":[1]

> "I think it is fair to say that any process by which a contestant is given an advantage over another known by the staff which produces the show, is rigging . . . Any possibility . . . (that) one contestant, by the aid of the production staff, is able to give one contestant an advantage over another contestant, that process is rigging."

---

[1]U. S. Congress, 86th, 1st Sess., House sub-committee investigation of television quiz shows hearings, Government Printing Office 1960 hearings, pp. 452-453.

Under Section 17 of the said Mineral Leasing Act it is provided that the first qualified applicant be granted a lease. This Section also puts limits on terms of leases (10 years) and when interpreted in conjunction with monopoly provisions of Section 27 of the leasing "Act" does support petitioner's contention that he was the first "qualified".

Another good definition of "rigging" is:

> "A 'faked up' transaction instead of one in regular course of business." *United States v. Mammoth Oil*, 5 F. 2d 330, p. 348.

Not considered by Court below was *Key-stone*/Section 27, *supra*.

> "The manifest design of Section 27 as amended is to prevent monopolistic control over the oil and gas deposits in public domain. 56 Interior Decision 174 (1937), 52 Land Decisions 359, 361 (1928). "The longer the period of possible control the greater the likelihood that this monopolistic evil will be spawned." M-33846 59 Interior Decision-5. Page 6, Par. 3—Page 7, Par. 2.

Monopoly evils are something similar to an overloaded python's digestive tract to the oil business. Monopolistic control of public domain oil and gas leases in some instances was by the same companies who pursued "imports" which stagnated the domestic industry; such glutting was also done with strawmen (see hearings Albuquerque, New Mexico, *infra*). Respondent's brief in opposition airily concedes that the device was practiced for the purpose of extending control over public lands.

Government antitrust actions have been taken recently against numerous oil companies; Section 27 is antitrust in both letter and purpose.

> "The essential characteristic of a monopoly is wrongful exclusion of competitors from the field." *United States v. National Retail Lumber Dealers Assn.*, 40 F. Supp. 448, citing *United States v. Socony-Vacuum*, 60 S. Ct. 845.

There were two distinct but allied propositions and questions involved in the two cases (16,373 and 16,374) which were split up and disengaged from the original action in the District Court by reason of an unauthorized stipulation entered into by petitioner's attorney with respondent's officers, but the Court below completely ignored 16,374 dealings with the *alter ego* "question".

Inconsequential are the economics of this matter. The leases are only a drop in the adverse lessess' "barrel of leases". Involved are a few non-competitive oil and gas leases in wild-cat areas. A majority of the leases have been dropped from consideration by petitioner's voluntary abandonment, as originally listed in the District Court action.

> "The injured party must make up his proof out of a chain of circumstances. . . . "THE QUESTION IS WHETHER THE DISCLOSED CIRCUMSTANCES PROVE THE CHARGE" . . . *"Mammoth Oil v. United States*, 275 U. S. 13-25, 36."

The history of this Court shows decisions on coal land entries, homestead entries where similar schemes were used to circumvent the law.

> "The Court held that the scheme was in violation of the coal statute. . . ."
>
> *United States v. Trinidad Coal & Coking Co.*, 173 U. S. 160 (1890).

This was followed in *United States v. Keitel*, 211 U. S. 370 (1908).

The case at bar is apparently the most important of the above nature concerning monolpoly schemes in public lands since the turn of the century which this Court has had an opportunity to review.

Respondent's brief cites as authority the so-called decision of the "Secretary" No. A-2760 but it and the brief ignore the controlling "rigging" point.

The District Court recognized monopoly. It said, at oral argument, on ifs judicial review in this matter:

> "They couldn't get knowledge in this case. Because it was 3:01 and 10:01, wasn't it, and the office is closed in the meantime?
>
> "So there is no public notice."

Decision by the adjudicator in the Santa Fe district land office dated May 8, 1957, concerning leases here in question stated:

> "Thus, in accordance with Section 17 of the Mineral Leasing Act of February 25, 1920, as amended, the offeror of lease offers New Mexico 031471 and 031472 is entitled to leases by *virtue* of being the first qualified applicant eligible to

hold a lease or leases under the Act. Consequently, the filed protest is dismissed as being without merit." (Emphasis supplied.)

Notwithstanding its adverse decision, the court below did find merit in the protest, when it characterized this procedure as a *vice*.

The mock-up administrative decision No. A-2760, *supra*, concerns L. N. Hagood, Wyoming oil operator on public lands. This gentleman in his article in "American Mercury" of April 1962 entitled "National Oil-Lease Lotteries" alludes to the Secretary as being naive and unaware of realities. Excerpts are:

> "As in all rigged games there is a system among smart operators. . . .
>
> "Nevertheless, enterprising lease brokers, promoters, speculators and others are accused of such illegal practices by the use of secret 'dummy' lease applicants for their benefit. The land office people say they are overworked in handling the monthly deluge without trying to be G-Men or doing the police work necessary to catch the culprits.
>
> "Uncle Sam . . . also allegedly *winks at questionable practices of some of his thousands of customers.*" (Emphasis not supplied.)

While it is true officers of the Secretary in some instances may be winking at questionable practices this petition has the gravamen; will not the judicial arm of government in its capacity as "Uncle Sam", curb these "officers"? Are they not plainly wrong, arbitrary and capricious in refusing to recognize qualified statutory rights (Sec. 17 supra) as opposed to a

competing right initiated by *"controlled device"* prohibited by statute. (See. 27 supra)?

Where is the line drawn? . . . Under conditions sustained here is not honesty the policy of a fool? Moreover, a bewildered fool, since the "Leasing Act" prescribes that applicants must act "honestly and in good faith."

Why the respondent's brief is so confused and obfuscating on the "Tract Book Rule" is most astonishing. Previous Departmental decisions are crystal clear in condemning "rigging"; for example, in Kruger, 65 I.D. 185, at page 191:

> "The overriding objective of the rule has been to assure to all the public equality of opportunity to file. . . .
>
> "This would give an unfair advantage . . . those who relied on the *Tract Book* would have *no notice*. . . . The fact is the Department has said the *Tract Book* is the record which will be determinative of whether land is *open* to filing." (Emphasis supplied.)

In *Machrix v. Brown*, 63 I.D. at page 163 and 65 I.D. at pages 227, 229, it is succinctly stated as above.

Wake-like Congressional hearings held on public lands show incredible corruption of the "public interest," particularly—hearings[2] on a bill to do equity to homesteaders in Alaska, also hearings held in Al-

[2]Hearings on S. 1670 (in 3 parts) by sub-committee on public lands of the Committee on Interior and Insular Affairs, United States Senate, 86th Cong., June 19, 1959, etc., U. S. Govt. Printing Office 45228.

buquerque, New Mexico, in October, 1956,[3] the latter containing testimony of carte blanche raiding of the public domain with dummy and straw-men in disregard of the statutory limitations. The testimony in the Alaska hearings is replete with factual statements describing conditions in which the general public were treated as second class citizens, with special interest proclivities depicted. However, these citizens were hardy pioneers, showing Frontier spirit; they were vociferous in urging their rights.

The Los Angeles District Land Office had even worse conditions since millions of dollars were taken from the public in the filing on their behalf of futile desert land entries by unscrupulous "land locators" who capitalized on this office's administrative indifference to the "public". Meanwhile, the manager's son during a part of that time was the key figure who utilized the Tract Book records on a preferred prerogative basis before the public could see them. In several of the leases in question he is involved as well as his principal.

While some of the material herein might seem to be of a carping nature, nevertheless the facts are necessary for the Court's full edification and decision, basic under the constitutional right of petition.

It is not the intention to clothe this case with the full import of cited cases. A "game" is one description of the "oil business". It will seem a calculated gamble was taken by the adverse lessees herein that no

[3] "To Investigate Observance or Non-Observance of the Acreage Limitations of the Mineral Leasing Act" Hearings by subcommittee of Committee on Interior and Insular Affairs, United States Senate, 84th Congress, Sept. 20 to Oct. 1, 1956, U. S. Govt. Printing Office 87402.

qualified applicant would apply for a lease before their leases were issued. In several instances such leases were issued prior to the filing of the second application which was withdrawn pursuant to I.D. A-27953 — *Stevenson v. Dunham, infra.*

The Secretary's officers have not responded to the issue: That these leases were appropriated on a special interest dominion basis while as a matter of law and right the lands involved were vacant unappropriated public domain of the United States subject to leasing under the Mineral Leasing Act of 1920 as amended Title 30 U.S.C., Secs. 181 to 226—subject to the filing of a qualified application.

> "If the Department determines to lease a tract of public land not within any known geological structure of a producing oil and gas field, Section 17 of the Act imposes upon it a mandatory duty to lease the land to the first qualified person who files a proper application for it." *Transco Gas and Oil Corp.* 61 I.D. 85 (1952).
>
> "For example, if a noncompetitive oil and gas lease is issued to some person other than the first qualified applicant in violation of the priority provided for in Section 17 of the Mineral Leasing Act (30 U.S.C., 1946, ed., sec. 226) . . . the lease must be canceled and a new lease must be granted to the qualified person who filed the first application . . ." 2—From Decision A-27953 Decided June 30, 1959 (*Albert Stevenson v. Alexander S. Dunham*). (Not reported.)

Even for trivial reasons Secretary's officers have consistently followed the above. (See *Fenlon B. Boesche et al. v. Udall*; No. 332, this court, cert. granted.)

In the Los Angeles land office this petitioner recently had an oil and gas application rejected for the same issue (43 C.F.R. 192.42(d)(2).) In the *Boesche* case, however, it was even more inequitable as surrounding land was not reasonably available for leasing, being in prior applications along with one of petitioners. Meanwhile a second application was filed by the person referenced as managers' son, *supra*; thus full circle runs the paradox.

Capriciousness of an arbitrary nature is apparently recognized by the Court in the granting of certiorari in 332. Reviewing that case without this will frustrate the court's judgment since involved here is not only arbitrary capriciousness but the affirmance of an incredible proposition.

> ". . . this shall be a government of laws, — because to the precise extent that the mere will of an official or an official body is permitted to take the place of allowable official discretion or to supplant the standing law as a rule of human conduct, the government ceases to be one of laws and becomes an *autocracy* . . ." (Emphasis supplied.) *Jones v. Securities Commission*, 298 U. S. 1, pages 23, 24.

When the game is on the square Americans do not complain of losing, but they become incensed when losing to an opponent who has a "fixed" advantage. The judiciary in the latter case constitutes the only pro-

tector of the American way of life, without the aid of which something which is the very essence of being an American is destroyed.

> "These lands are held in trust for the United States and the trustees—that is, the public officers who administer and control them—can do so only for the public welfare and in a manner designed to preserve the integrity of the government." *United States v. Pan American Pet. Co.*, 6 F. 2d 43—p. 55.

The Court can well take judicial notice that many of the general public have a conception of government, heightened by recent disclosures in the Agriculture Department, indictments of Congressmen, Federal Communications scandals, and the frauds in public lands as cited herein, that is cynical and distrustful towards segments of the other two branches of government, but as far as the federal judicial arm, particularly this Court, these same people, including petitioner have an abiding respect, confidence, esteem and even reverence greater than people in any time have had for a ruler or body of rulers.

In a case decided a few weeks ago, No. 17,101 *Thor-Westcliffe Development, Inc. v. Stewart L. Udall, Secy. of the Interior, et al.*, the Court below now recognizes "* * * corruption of Land Office employees" and cites this case as well as *Signal Oil and Gas Co.*, Interior Dept. No. A-28626 (1961); *Margaret A. Andrews, et al.*, 64 I. D. 9 (1957).

President Theodore Roosevelt's views on monopolies were sharply pertinent to this case:

"The true way of dealing with monopoly is to prevent it by administrative action before it grows so powerful that even when courts condemn it they shrink from destroying it. The Supreme Court in the Tobacco and Standard Oil cases, for instance, used *very vigorous* language in condemning these trusts; but the net result of the decision was of *positive advantage to the wrong-doers,* and this has tended to bring the whole body of *our law into disrepute* in quarters where it is of the very highest importance that the law be held in respect and even in reverence." (Emphasis supplied.)

The above language fits perfectly the case on review. See:

"Is a Court compelled to close its eyes to these circumstances? . . ." *United States v. Mammoth Oil,* 14 F. 2d 705, 729.

Unquestionably, the Secretary and the Director of the Bureau of Land Management are men of the highest ideals and character.

In the comparable Alaska situation above referred to, the Director and Secretary sponsored ameliorating legislation. Exposures from the New Mexico hearings resulted in the Department and the Bureau instigating complaints involving 517 federal oil leases on the grounds of fraudulent acquisition. However, the Secretary and the Director were frustrated by the Federal judiciary, by the decision in *Pan-American Petroleum v. Pierson,* 284 F. 2d 649. Acquisition of 517 fraudulent leases as charged in the complaints perhaps comprised only a fraction of leases acquired in this

manner. These frauds are distinguished: there, no qualified applicant's rights were directly taken away. Here although *per se* these rights are insignificant, as an element or principal in government under law they set a standard for the "free world."

"We know that a new world order is in the making.

"A world without law is hell-bent for destruction, with, or without scientific discoveries. . . .

". . . The law lags behind until crisis stirs it into action . . ."

Chief Justice Warren—Georgia Tech, Feb. 12, 1963

Presented here is the proposition or question, is one applicant for public land under public lands laws of U. S. "qualified" over another applicant when he files application through an exclusive "rigging" practice.

"In layman's language law is the prediction of what will happen to you, if you do certain things, this was a lesson Holmes' taught, and every lawyer on reflection knows that it is sound."

Justice William O. Douglas.

Its Brochure of May, 1960, describes the Bureau's operations with land law examiners:

"This often complex process—called adjudication—involves determinations of rights and privileges under the Nation's body of public land and mineral law. The lands and resources involved often have great value—to the people who are seeking to use or acquire them and to all of the American

people whose interest the Bureau of Land Management serves."

"Land Law Examiners work with applications for the use and acquisition of public lands and resources. In one recent year BLM Land Offices adjudicated over 175,000 cases . . ."

"If you become a Land Law Examiner you will be required to review these various types of applications. Using guidelines, you will determine whether or not the application should be approved or rejected and prepare a formal statement (called a *Decision*) based upon your determination."

Hence "determinations" by a lower echelon bureaucrat can control an American's destiny.

Imperative, therefore, is this Court's guide-line since it is clear in this case privilege is granted based on a repugnant proposition, over a lawful right:

"Clearly the supervisor for the State of Wyoming, Bureau of Land Management Department of the Interior, is the arm or alter ego of the secretary."

Pan American Co. v. Pierson, 181 Fed. Supp. 557, p. 564.

Unprecedented is the following from Carson City (A. P.) February 5, 1963: "the Nevada Senate passed a resolution containing a sweeping indictment of the Federal Bureau of Land Management and U. S. Interior Secretary, Stewart Udall, the Secretary was called "capricious".

Respondent Secretary is well known to the public, and has captured their interest because of his vigor, noble character, achievements as athlete, naturalist, and statesman. Realistically he is respondent in name only, in effect a captive of his own lower echelon system. Thus his great promise is unfairly handicapped.

The question is, then, why has there been so much corruption of the public interest in public lands? The answer may be found in improper delegation of authority superimposed on a system which will not tolerate any reversal of lower echelon bureaucratic decisions. In history's final analysis, the fault must not be found to lie with the federal judiciary for failing to impose the necessary curbs, in the actions remedial. Also, respondent's brief refers to the discretionary power of the Secretary; however, there's a rub; cited as decisions of the Secretary are what were in effect the decisions of the local land law examiners or adjudicators in the District Land Offices,[4] also the Hagood administrative decision, *supra*, was by a deputy solicitor as "acting solicitor" whose delegation of authority was highly irregular.

Delegated to him from a prior administration was the authority of the solicitor, which was delegated to the deputy solicitor by an acting solicitor.

> "It is not necessary that the Government should be subjected to property or pecuniary loss by the fraud, but only that its legitimate, official action and purpose shall be defeated by *misrepresentation*,

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[4]On appeal, reversal is obtained at the Bureau or Departmental level only once in a "blue moon".

chicane or the overreaching of those charged with carrying out the Governmental intention." (Emphasis supplied.) *Pan American v. United States*, 9 F. 2d 761—page 771 (4).

It may be asked, "What in the world does 'Khrushchev' have to do with this matter?" Obviously, while he may press a button and destroy the civilized world, he dare not! However, the propaganda line of his agents throughout the world undermines the capitalist system and in essence their lies are that our system is "rigged" for the benefit of special interest.

This is not Russia, indeed and a citizen's rights in the public domain under public land laws distinguishes the ideologies from the beginning. Petitioner's right to be heard by this court distinguishes the individual in the noblest sense. It would have been facetious for the respondent to ask Khrushchev the fate of a Russian citizen who dared question the ruling of one of his administrators.

Correcting feudal systems in South American while sustaining them here would seem to be at cross purposes.

> "We will be judged by what we do here rather than what we preach abroad." JFK, State of the Union, 1963.

Television is further cited as authority. In old movies with stories of the public lands schemes such as involved here never succeed. Uncle Sam always in the nick of time sees that justice is triumphant "in the end".

Although respondent's brief has been contending the point of "indispensable parties" none of them has intervened and the reason is obvious, while petitioner has

a silent intervenor, *amici curiae,* "Uncle Sam" who surely is not pleased with the proceedings. This honorable Court in the hearts of the people is the highest ennoblement of Uncle Sam.

Although the court below deliberated a length of time greater than its wisdom had been given to other cases in recent history, the opinion rendered leaves the public interest along with the proposition in an indefinite *cul-de-sac.* Therefore review is impelled, with opinion of this court affirming or reversing the court below, but on a basis which may be relied.

An opinion by this court would negate the pressures inimicable as posterity might contemplate the decision under review. . . .

> "The essense of our free government is 'Leave to live by no man's leave, underneath the law'. — To be governed by those impersonal forces which we call the law."
>
> Justice Jackson — Steel seizure case.

The decision below while drawing up a blueprint of special interest "vices" and corruption of Land Office employees has begged building the necessary, justifiable decision; moreover, the decision below is at war with the plain language of Sections 17 and 27 of the Mineral Leasing Act of 1920 as amended, decisions of this Court, courts below and Interior Decisions. The need for reviewing and resolving such conflicts, particularly where the integrity of the United States and the integrity of the Federal Judiciary's interest in protecting the public against corruption in their public domain are at stake, justifies the grant of certiorari.

Conclusion.

For these reasons, as well as those expressed in the petition for a writ of certiorari, the order denying the petition should be vacated and a writ of certiorari should issue.

Dated February 28, 1963.

Respectfully submitted,

DUNCAN MILLER,

Pro Se.

Certificate.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

DUNCAN MILLER,

Pro Se.